

1  
2  
3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

5 \* \* \*

6 DANIEL JAMES DRAPER,

Case Nos. 3:12-cr-00004-MMD-VPC  
3:24-cv-00038-MMD

7 Petitioner,

8 ORDER

v.

9 UNITED STATES OF AMERICA,

10 Respondent.

11 Before the Court is *pro se* Petitioner Daniel James Draper's motion to vacate, set  
12 aside, or correct sentence under 28 U.S.C. § 2255 ("Motion"). (ECF No. 179.)<sup>1</sup> The Court  
13 denies Petitioner's Motion because he previously submitted another motion to vacate  
14 under Section 2255 in 2015 (ECF No. 127), and he has not obtained an order from the  
15 Court of Appeals authorizing this Court to consider a second petition under the same  
16 statute.<sup>2</sup>

17 Before this Court may consider a second or successive motion under 28 U.S.C. §  
18 2255, the Ninth Circuit Court of Appeals must certify the second or successive motion  
19 according to the requirements under 28 U.S.C. § 2244. See 28 U.S.C. § 2255(h); *Jones*  
20 *v. United States*, 36 F.4th 974, 981 (9th Cir. 2022). To obtain certification, the applicant  
21 must "move in the appropriate court of appeals for an order authorizing the district court  
22 to consider the application." 28 U.S.C. § 2244(b)(3). The applicant must demonstrate that  
23 the successive motion contains either: (1) newly discovered evidence that, if proven and  
24 viewed in light of the evidence as a whole, would be sufficient to establish by clear and

25  
26 <sup>1</sup>The Court cites to the docket in Case No. 3:12-cr-00004-MMD-VPC, Petitioner's  
27 criminal case number. Petitioner's related civil case is open as Case No. 3:24-cv-00038-  
28 MMD.

<sup>2</sup>Petitioner filed a counseled second successive habeas corpus motion with leave  
from the Court of Appeals in December 2016. (ECF No. 142).

1 convincing evidence that no reasonable factfinder would have found the movant guilty of  
2 the offense; or (2) a new rule of constitutional law, made retroactive to cases on collateral  
3 review by the Supreme Court, that was previously unavailable. 28 U.S.C. § 2255(h).<sup>3</sup>  
4 Petitioner's Motion has not been certified by the Circuit.

5 It is therefore ordered that Petitioner Draper's Motion to Vacate, Set Aside or  
6 Correct Sentence under 28 U.S.C. § 2255 (ECF No. 179) is denied for lack of certification.  
7 If Petitioner wishes for the Court to hear this or another successive motion under Section  
8 2255, he should first move for certification in the Ninth Circuit Court of Appeals by  
9 demonstrating that he has met the requirements of Section 2255(h).

10 DATED THIS 15<sup>th</sup> Day of May 2024.

11   
12 MIRANDA M. DU  
13 CHIEF UNITED STATES DISTRICT JUDGE  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

---

26 <sup>3</sup>The Court also notes that a one-year statute of limitations period begins to run  
27 according to the considerations in 28 U.S.C. § 2255(f) and, in the case of a second or  
28 successive petition, this limitations period generally depends on the date on which new  
relevant evidence could have been discovered or on which the Supreme Court recognizes  
a new right that forms the basis of the petition. See 28 U.S.C. §§ 2255(f)(2)-(4).